



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 7, 1995

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Legal Affairs Division
Texas Department of Criminal Justice
P.O. Box 99
Huntsville, Texas 77342-0099

OR95-1374

Dear Mr. Peck:

You have asked this office to determine if certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. The Texas Department of Criminal Justice ("TDCJ") received a request for investigation records concerning the murder of a named inmate. You contend that the information is excepted under section 552.108. Your request was assigned ID# 35862.

Section 552.108 excepts from disclosure:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . ; [and]
- (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement.

When applying section 552.108, this office distinguishes between cases that are still under active investigation or prosecution and those that are closed. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist. 1975], writ ref'd n.r.e. per curiam,

586 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976); *see also* Open Records Decision No. 127 (1976). A case may be closed due to a conviction or acquittal, or by administrative decision. Open Records Decision No. 372 (1983) at 4.

You state that several individuals have already been indicted for the murder. We have reviewed the documents that you provided as responsive to the request and have determined that most of this information may be excepted from disclosure under section 552.108.¹ However, documents submitted to this office as responsive to the request include the deceased inmate's medical records. Section 5.08(b) of the Medical Practice Act, V.T.C.S. art. 4495b, provides for the confidentiality of medical records and also access provisions for those records. Open Records Decision No. 598 (1991). Section 5.08(b) reads as follows:

Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

Section 5.08(j)(1) provides for access to medical records if the personal representative of the deceased provides a written consent specifying (1) the medical records covered by the release, (2) reasons or purpose for the release, and (3) the person to whom the information is to be given. Access to medical records is governed by section 5.08 rather than the Open Records Act. Open Records Decision No. 598 (1991).

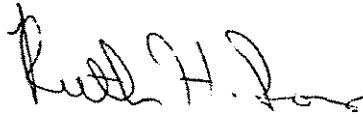
You also submitted to this office a copy of a custodial death report and an autopsy report. Autopsy reports are expressly made public under section 11, article 49.25 of the Code of Criminal Procedure and may not be withheld from disclosure. *See* Open Records Decision No. 529 (1989). Article 49.18(b) of the Texas Code of Criminal Procedure requires the director of the city's jail to prepare and file a custodial death report with the attorney general about prisoners who die while in custody. Under article 49.18(b), in conjunction with a directive issued by the Office of the Attorney General, section one of custodial death reports filed with the attorney general is public information. *See* Open Records Decision No. 521 (1989) at 5. You must therefore release the autopsy report and section one of the custodial death report. The remaining portions of the custodial death report must be withheld. The other records at issue may be withheld from disclosure pursuant to section 552.108.²

¹We are assuming that the information submitted to this office has not been previously released to a member of the public. Section 552.007 of the Government Code prohibits selective disclosure of information.

²We note that even after the investigation is closed by conviction, acquittal, or administrative decision, some of the information at issue may not be released because it is otherwise confidential.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Ruth H. Soucy".

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/rho

Ref.: ID# 35862

Enclosures: Submitted documents

cc: Mr. Peter Archard
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(w/o enclosures)